



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Wylie Mechanical
File: B-228695.4
Date: August 4, 1989

DIGEST

Decision is reversed and protest sustained where subsequent investigation shows that the initial decision was based on an error of fact. Investigation shows that agency protest report incorrectly stated that no price information was disclosed during procurement when in fact awardee was improperly advised as to the difference between its high price and the protester's price on the initial offers.

DECISION

Wylie Mechanical requests that based on the results of a subsequent Air Force Office of Special Investigation Report we reconsider our decision, Wylie Mechanical, B-228695, Oct. 27, 1987, 87-2 CPD ¶ 407, in which we denied in part and dismissed in part Wylie's protest against the Air Force's award of a contract for air conditioner maintenance to O'Toole Mechanical Services, Inc., under request for proposals No. F41650-87-R-0013.

One of the protest contentions raised by Wylie was that the prices in its initial offer were improperly disclosed to the awardee before best and final offers had been submitted. In its report in response to the protest the agency's contracting officer denied that any pricing information had been released. Since there was no evidence supporting the protester's contention, we denied the protest on that issue.

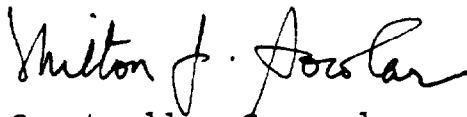
As the result of a subsequent Air Force investigation the agency now informs us that the awardee was mistakenly provided with price information concerning Wylie's initial offer. The agency states that had it been aware of this at the time the protest was filed it would not have contested the protest. Consequently, the Air Force informs us that it will not exercise any of the options remaining on O'Toole's

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contract and that it will initiate a new procurement for the remaining services. Work on the second 1-year option period was begun on April 1, 1989.

Based on this new information it is clear that our original decision was based on an error of fact--O'Toole in fact was given information about its competitor's pricing. Since advising an offeror of its price standing relative to another offeror is prohibited, Federal Acquisition Regulation § 15.610(d)(3)(ii), and the release of this information had that effect, we now sustain the protest and agree with the agency that no further options should be exercised and that the requirement should be recompeted. Further, since we are now sustaining the protest, we find that the protester is entitled to the costs of preparing its proposal and of filing and pursuing its protest. Bid Protest Regulations, 4 C.F.R. § 21.6(d) (1988). Wylie should submit its claim for these costs directly to the agency. 4 C.F.R. § 21.6(e).

The original decision is reversed and the protest is sustained.

for 
Comptroller General
of the United States